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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

FILED/ACCEPTED

MAY 15 2009

Federal Communications Commission
Office of the Secretary

In the Matter of

**Federal-State Joint Board on
Universal Service**

PETITION FOR FORBEARANCE

CC Docket No. 96-45

PETITION FOR FORBEARANCE OF HEAD START TELECOM, INC.

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SUMMARY

Head Start Telecom, Inc. (“Head Start”) is seeking forbearance from section 214(e)(1)(A) of the Communications Act of 1934, as amended (“Act”), which requires a common carrier designated as an eligible telecommunications carrier (“ETC”) to offer services supported by the universal service fund (“USF”) over its own facilities or a combination of its own facilities and the resale of another carrier’s services. Head Start requests forbearance from the section 214(e)(1)(A) facilities requirements since it is a reseller of commercial mobile radio services (“CMRS”) and will soon apply for designation as an ETC by the Oklahoma Corporation Commission solely for purposes of participation in the USF’s Lifeline program throughout Oklahoma, including on tribal lands. Head Start expects that it will expand its service offerings to and apply for ETC designation in other states in the near future.

Head Start’s Petition for Forbearance satisfies the Commission’s forbearance standard since enforcement of section 214(e)(1)(A) is not necessary to ensure that Head Start’s rates are just and reasonable and non-discriminatory. In the robustly competitive wireless market, Head Start will compete against other carriers, including prepaid and postpaid providers, to offer customers the lowest priced and highest quality services. This competition ensures that Head Start offers its customers just, reasonable, and non-discriminatory rates and terms.

Second, enforcement of the facilities requirement is not necessary to protect consumers. In this case, forbearance will provide significant benefits to consumers, especially low-income consumers, by increasing their alternatives for affordable telecommunications services. Grant of petition will not unduly burden the USF or otherwise reduce the funding available to other ETCs, since Head Start is seeking forbearance to allow designation as an ETC solely for participation in the Lifeline program.

Forbearance also is in the public interest since it will permit Head Start to provide discounted telecommunications services to qualifying low-income customers—the intended beneficiaries of USF support. Many low-income consumers have yet to benefit from competition in the telecommunications industry because of financial constraints, poor credit history, or intermittent employment. Head Start’s service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. Grant of forbearance, therefore, will enable Head Start to expand the availability of affordable telecommunications services to these consumers, enhancing choice and lowering prices.

Finally, Head Start’s request for forbearance is consistent with prior Commission precedent that granted Tracfone Wireless, Inc. (“Tracfone”) and Virgin Mobile USA, L.P. (“Virgin Mobile”), resellers of CMRS services, with forbearance from the facilities requirement. Most recently, in its 2009 decision granting forbearance to Virgin Mobile, the Commission determined that the statutory goal of providing telecommunications services to low-income consumers outweighs the requirement that Virgin Mobile own facilities. As the Commission noted, with only about one-third of Lifeline eligible households actually subscribing, granting the Virgin Mobile petition serves the public interest as it should expand participation of qualifying consumers. For similar reasons, grant of forbearance to Head Start will benefit low-income consumers, particularly eligible residents of tribal lands. In addition, Head Start will abide by the conditions imposed on both Tracfone and Virgin Mobile as part of the Commission’s decisions granting those forbearance requests.

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PETITION FOR FORBEARANCE

I. INTRODUCTION

Head Start Telecom, Inc. (“Head Start”), pursuant to Section 10 of the Communications Act of 1934, as amended (“Act”),¹ hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to forbear from enforcement of section 214(e)(1)(A) of the Act requiring a common carrier designated as an eligible telecommunications carrier (“ETC”) to offer services supported by the universal service fund (“USF”) over its own facilities or a combination of its own facilities and the resale of another carrier’s services.² Head Start’s request for forbearance satisfies the requirements of Section 10(a) of the Act and accords with Commission precedent since it seeks forbearance from the requirements of section 214(e)(1)(A) only for purposes of participation in the USF’s Lifeline program. As discussed below, grant of forbearance will enable Head Start to provide discounted telecommunications services to its low-income customers. Prompt Commission action also will ensure that Head Start expeditiously

¹ See 47 U.S.C. § 151 et seq.

² See 47 U.S.C. § 214(e)(1)(A)

deploys its services to the many low-income consumers that currently lack access to affordable telecommunications services, including those eligible residents living on tribal lands.

II. BACKGROUND

A. Head Start Overview

Head Start will provide prepaid wireless telecommunications services to consumers by reselling the services of a national wireless carrier that provides wholesale capacity to wireless resellers. The wholesale carrier will provide Head Start with the network infrastructure and wireless transmission facilities, allowing Head Start to operate as a Mobile Virtual Network Operator (MVNO), similar to both TracFone and Virgin Mobile. As an MVNO, Head Start will purchase wireless services from the underlying carrier on a wholesale basis for calling and text messaging, and resell those services to customers using its own brand. Head Start will manage and market all aspects of the customer experience, including pricing, the Head Start website, handset selection, service offerings, entertainment applications and marketing materials. Head Start's simple and straightforward prepaid, pricing, along with its differentiated services offerings and high-quality customer service, will set the standard for the prepaid wireless market. Head Start's value proposition will enable customers to select among an array of flexible service plans that allow them to pay for minutes as they use them or purchase monthly packages of minutes in advance.

Head Start's customers are from lower income backgrounds and generally do not enjoy access to wireless service because of economic constraints, poor credit history and inability to enter into a long-term contract. Head Start does not impose credit checks or long-term service contracts as a prerequisite to obtaining service. Prepaid wireless services have become essential for lower-income customers, providing them with value for their money, access to emergency

services on wireless devices, and a reliable means of contact for prospective employers or social services agencies. By providing affordable wireless plans and quality customer service to consumers who are otherwise unable to afford them and were previously ignored by traditional carriers, including those eligible residents living on tribal lands, Head Start will expand access to wireless services.

Head Start currently provides prepaid wireline telecommunications services to low income consumers in Oklahoma, including on tribal lands, and is also certified as an ETC in Oklahoma.³ Through this experience, the ownership of Head Start recognized that there was growing demand from the customer base for wireless services as low income consumers, left with fewer choices, were looking to spend their limited telecommunications budgets on wireless services that would afford them mobility and always available service, including for prospective employers and social service agencies. As a result, Head Start will expand its service offerings in order to serve the growing needs of Oklahoma's low income consumers living on tribal lands for a competitive, prepaid wireless service. The company expects to provide services to and receive ETC designation in other states during the next 24 months.

B. Lifeline Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act 75 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, especially for low-income consumers. Section 254(b) designates the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications

³ Final Order Granting Certification As An Eligible Telecommunications Carrier, Cause No. PUD 200800238, Order No. 562387 (issued November 20, 2008).

services at comparable and affordable rates.⁴ The Lifeline program is one of several USF support mechanisms that furthers the goals contained in section 254. Lifeline support is designed to reduce the monthly cost of telecommunications services for lower-income consumers by providing them with significant discounts for service—with greater discounts available for individuals living on tribal lands.

The Commission has credited this program for gradually increasing telephone penetration rates, especially among low-income consumers. Despite the steady rise in penetration rates, however, the FCC has noted that “there is more that we can do to make telephone service affordable for more low-income households” and has targeted the low Lifeline participation rate as one area for improvement.⁵ Indeed, Commission concerns regarding the underutilization of this program have existed since its inception.⁶ In a recent order, the Commission stated that only about one-third of eligible participants receive Lifeline support.⁷

The Act provides that only an ETC shall be eligible to receive funding from the USF, including the Lifeline program. Section 214(e)(1)(A) of the Act provides that a carrier designated as an ETC shall offer the services supported by the USF by using either its own facilities or a combination of its own facilities and the resale of another carrier’s services.⁸ In its 1997 Order implementing section 254, the Commission determined that it would be inappropriate to

⁴ 47 U.S.C. § 254. Section 254(b)(3) requires the Commission to determine whether “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas ... have access to telecommunications [services]” [emphasis added] 47 U.S.C. § 254(b)(3).

⁵ See *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Red 8302, 8305 (2004) (“*Lifeline/Link-Up Order*”). According to the Commission’s own statistics, only one-third of households eligible for assistance actually participated in the Lifeline/Link-Up program just a few years ago. See *id.*

⁶ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8972 (1997) (“*1997 Order*”).

⁷ See *In the Matter of Virgin Mobile USA, L.P. Petition from Forbearance*, Order, CC Docket 96-45 (released March 5, 2009) at para. 30 (“*Virgin Mobile Order*”).

⁸ See 47 U.S.C. § 214(e)(1)(A)

designate pure resellers as ETCs since these entities “receive the benefit of universal service support by purchasing wholesale services at a price that already includes the universal service support payment” obtained by the underlying facilities-based provider.⁹ The Commission concluded, therefore, that denial of ETC designation for pure resellers was proper since it would prevent double recovery of universal service support payments “because they [pure resellers] would recover the support incorporated into the wholesale price of the resold service in addition to receiving universal service support directly from the federal universal service mechanisms.”¹⁰

C. Forbearance Standard

Section 10(a) of the Act requires that the Commission forbear from applying any regulation or any provision of the Act to any telecommunications carrier if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and,
- (3) forbearance from applying such provision or regulation is consistent with the public interest.¹¹

In making the public interest determination required by section 10(a)(3) above, the Commission must consider “whether forbearance ... will promote competitive market conditions.”¹² Any determination by the Commission that forbearance will promote competition among providers of telecommunications services may be the basis for a Commission finding that

⁹ 1997 Order at 8866.

¹⁰ *Id.* at 8876.

¹¹ 47 U.S.C. § 160(a).

¹² “47 U.S.C. § 160(b).

forbearance is in the public interest. Forbearance is warranted only when all three factors of the analysis are satisfied.

D. Tracfone and Virgin Mobile Petitions for Forbearance

The Commission has granted forbearance petitions filed by Tracfone and Virgin Mobile from the section 214(e)(1)(A) facilities-based requirement.¹³ Like Head Start, Tracfone and Virgin Mobile are MVNOs that provide prepaid wireless services. In approving the Tracfone and Virgin Mobile requests for forbearance, the Commission concluded that the companies had satisfied the three requirements of section 10(a) and that the facilities requirement [of section 214(e)(1)(A)] was impeding greater utilization of Lifeline-supported services provided by a pure wireless reseller.¹⁴

With respect to the first prong of the section 10(a) analysis, the Commission decided that enforcement of the facilities-based requirement was not necessary to ensure that Tracfone's and Virgin Mobile's charges, practices, and classifications remained just, reasonable and non-discriminatory. In making this determination, the Commission judged its prior concerns regarding double recovery of universal service support by pure resellers inapplicable to wireless resellers providing only low-income services because they do not purchase supported services for pass through to their customers. Since support is distributed on a per-customer basis, and directly reflected in the price a customer pays, the Commission maintained that the underlying carrier would not receive any support for that customer to pass on to the reseller.¹⁵

¹³ See *In the Matter of Federal-State Joint Board on Universal Service, Petition of Tracfone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Red 15095 (2005) ("Tracfone Order"); *Virgin Mobile Order*.

¹⁴ Tracfone at 15100; Virgin Mobile Order at para. 29

¹⁵ Tracfone Order at 15100; Virgin Mobile Order at para. 18.

The Commission also determined that Tracfone's and Virgin Mobile's forbearance requests satisfied the second and third components of the section 10(a) analysis since enforcement of the facilities requirement was not necessary for the protection of consumers and was not consistent with the public interest. The Commission decided that forbearance from the facilities requirement actually would benefit consumers since a grant of forbearance would provide eligible consumers a choice of providers and further the Act's goals of advancing the deployment of telecommunications services to low-income customers.¹⁶ Of particular importance, the Commission concluded that granting Tracfone's and Virgin Mobile's requests would serve the public interest by raising awareness of the USF's low-income program and expanding the participation of qualifying consumers.

Finally, the Commission conditioned the Tracfone and Virgin Mobile decision on a number of conditions, all of which Head Start agrees to comply with.¹⁷ Specifically, in the *TracFone Order*, the Commission required TracFone to: (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone provides its customers with 911 and E911 access; (e) require its customers to self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service

¹⁶ See *Tracfone Order at 15104-15105*; *Virgin Mobile Order at 30*.

¹⁷ See *Tracfone Order at 15098-15099*; *Virgin Mobile Order at para.3*.

only from TracFone;¹⁸ and (f) establish safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.¹⁹

III. ANALYSIS

A. Head Start's Petition for Forbearance Satisfies the Commission's Waiver Standard and Is in the Public Interest

1 Enforcement of Section 214(e)(1)(A) Is Not Necessary to Ensure that Head Start's Rates Are Just and Reasonable and Non-Discriminatory

Section 10(a)(1) of the Act directs the Commission first to determine whether enforcement of the specific regulation at issue “is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.”²⁰ Given the extremely competitive state of the wireless industry, enforcement of section 214(e)(1)(A) is unnecessary to ensure that Head Start's rates are just and reasonable. In the *Virgin Mobile Order*, the Commission concluded that the vigorous competition in the wireless market would ensure Virgin Mobile's rates are just and reasonable and not unjustly or unreasonably discriminatory.”²¹ Indeed, Head Start will compete against numerous other wireless carriers, including prepaid and postpaid providers and resellers and

¹⁸ On April 27, 2009, Tracfone filed a request to modify this condition to require the company to verify on an annual basis using a statistically valid sample, that its Lifeline customers are head of household and only receive Lifeline supported service from Tracfone, which is consistent with the requirement for other ETCs. Tracfone Wireless, Inc., *Petition for Modification of Annual Verification Condition*, CC Docket No. 96-45, filed April 27, 2009. Should the Tracfone request be granted prior to the decision on this forbearance petition, Head Start would ask that the revised condition be applied to it as well.

¹⁹ TracFone Order at 15098-99. Recently, the Commission modified condition (d) to allow TracFone to self-certify compliance if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area. *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, FCC 09-16 (rel. Mar. 5, 2009). Head Start requests that the modified condition be applied to it, as well.

²⁰ See 47 U.S.C. § 160(a)(1).

²¹ See *Virgin Mobile Order* at para. 19.

facilities-based providers alike.²² As it did in the *Virgin Mobile Order*, the Commission should find that the existence of this robust competition ensures that enforcement of section 214(e)(1)(A) is unnecessary to ensure that Head Start provides its services at rates that are just and reasonable and not discriminatory.

2 Enforcement of Section 214(e)(1)(A) Is Not Necessary to Protect Consumers

Application of Section 214(e)(1)(A)'s facilities-based requirement to Head Start is not necessary to protect consumers. Head Start's request for forbearance must be examined in light of the Act's goals of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—especially low-income consumers—receive affordable and comparable telecommunications services. Given this context, granting forbearance to Head Start actually would benefit consumers, especially its many low-income consumers eligible for Lifeline services. Head Start's participation in the Lifeline program would increase opportunities for the company to serve these customers with appealing and affordable service offerings. Forbearance also will promote competition and increase the pressures on other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this much ignored consumer segment. As the Commission found in the *Tracfone Order*, forbearance for Head Start to participate in the low-income program would greatly benefit low-income consumers, particularly those on tribal lands, since it would offer eligible consumers "a choice of providers not available to such consumers today for accessing telecommunications services."²³

²² See Marguerite Reardon, *Prepaid Wireless Service Could Spur Price War*, posted at <http://edition.cnn.com/2009/TECH/05/06/prepaid.wireless/index.html>, on May 6, 2009.

²³ *Tracfone Order* at 15101.

Head Start's request also will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of the low income support programs with respect to overall USF expenditures is well documented. According to the Joint-Board's most recent monitoring report, Lifeline/Link-Up funding totaled approximately \$824 million in 2007 while high-cost program expenditures amounted to more than \$4.2 billion—five times the amount of Lifeline/Link-Up funding.²⁴ Although many parties have raised concerns over the growth in the USF's high-cost program, the Lifeline/Link-Up program has triggered no similar outcry. Indeed, each new, previously unserved customer added by Head Start adds to the total value of the network for all users – which is precisely the goal of the Lifeline program.

Addressing funding concerns in the *Virgin Mobile Order*, the Commission concluded that grant of forbearance to Virgin Mobile would not significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers' [USF] contribution obligations.²⁵ The Commission should likewise find that grant of forbearance to Head Start to receive Lifeline funding will not increase costs or overall USF expenditures in any meaningful way, and instead will benefit the many low-income customers who do not currently participate in the Lifeline program and may not have phone service at all.

3 Forbearance Is in the Public Interest

The final forbearance factor set out in section 10(a)(3) directs the Commission to determine whether enforcement of the section 214(e)(1)(A) facilities requirement “is not in the public interest.” One of the principal goals of the Act, as amended by the Telecommunications Act of 1996 is “to secure lower prices and higher quality services for American

²⁴ See *Universal Service Monitoring Report*, CC Docket 98-202, Tables 2.2 and 3.1 (filed Dec.31, 2008).

²⁵ *Virgin Mobile Order* at para. 24.

telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.²⁶ There is no question that forbearance will further the public interest by providing consumers, especially low-income Lifeline consumers, with lower prices and higher quality services. Many low-income customers have yet to reap the full benefits of the intensely competitive wireless market. Whether because of financial constraints, poor credit history, or intermittent employment, these consumers often lack the countless choices available to most consumers. Granting Head Start forbearance from the section 214(e)(1)(A) facilities requirement, therefore, will enable it to expand the availability of affordable telecommunications services to these consumers leading to lower prices and increased choice. Moreover, as noted above, imposing on Head Start the same conditions that were imposed on Tracfone and Virgin Mobile will further ensure that the public interest in the universal availability of communications services, including emergency services, is well served.

That forbearance will promote competitive market conditions in the wireless market also is unquestioned. Head Start will provide additional competition for those customers most often ignored by larger carriers. Failure by the Commission to forbear from enforcement of the facilities requirement, however, could potentially harm low-income consumers by precluding the further deployment of innovative wireless services. Believing that more can be done to further expand participation to those subscribers that qualify for Lifeline, the Commission granted Virgin Mobile’s forbearance request because it should expand participation of qualifying consumers.²⁷

²⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

²⁷ Virgin Mobile Order at para. 30.

ETC designation will enable Head Start to offer services to low income customers to ensure that they are able to afford uninterrupted wireless service. Providing Head Start with the authority necessary to offer discounted Lifeline services, including to eligible consumers on tribal lands, to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

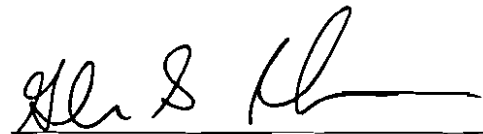
IV. CONCLUSION

As discussed above, Head Start's request for forbearance satisfies the requirements of section 10(a) of the Act since it seeks forbearance from the requirements of section 214(e)(1)(A) only for purposes of participation in the USF Lifeline program. Grant of forbearance (with the conditions stated forth herein) will enable Head Start to advance the deployment of discounted telecommunications services to low-income customers, including eligible consumers living on tribal lands. Prompt Commission action also will ensure that Head Start expeditiously deploys its Lifeline services to the many low-income consumers that currently lack access to comparable and affordable telecommunications services.

WHEREFORE, for all of the foregoing reasons, Head Start respectfully requests that the Commission forbear from applying section 214(e)(1)(A) to its request for designation as an ETC.

Respectfully submitted,

HEAD START TELECOM, INC.

A handwritten signature in black ink, appearing to read "Glenn S. Richards", is written over a horizontal line.

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Its Attorney

May 15, 2009

Verification

I have read the foregoing Petition for Forbearance and the facts stated therein, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read "Scott Cathey", is written over a horizontal line.

Name: Scott Cathey

Title: VP of Business Development

Date: 5/15/09